IN THE HIGH COURT OF BOMBAY AT GOA
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SECOND APPEAL NO. 4 OF 2004

1. M/s. Shriji Builders,
having office at 7,
Diamond Chambers,
18th June Road, Panaji,
Goa, through its partner
Mrs. Anusuyaben Rasiklal
Gangani, r/o Galaxy
Building, Off Dr.
Atmaram Borkar Road,
Panaji, Goa,

2. Mrs. Jivtiben Mohanlal
Gangani, and

3. Mr. Rasiklal Mohanlal
Gangani, both r/o Galaxy
Building, Off Dr. Atmaram
Borkar Road, Panaji, Goa. ... Appellants.

Versus

1. M/s. Wibro Construction
Company, having office at
3rd Floor, Cardozo Building,
Patto, Panaji, Goa, through
its Proprietor Mr. K. Abdulla,
r/o Porvorim, Bardez, Goa, and

2. Shri Girdharlal Mohanlal
Gangani, havig his office
at 8, Diamond Chambers,
18th June Road,
Panaji, Goa. ... Respondents.

Shri V. K. Bodke, advocate for the appellants.

Shri V. Menezes, advocate for the caveator/respondent no.1.

Respondent no.2 present in person.

CORAM : S. A. BOBDE, J.

DATE : 10th June, 2004

ORAL JUDGMENT

Admit. By consent, heard forthwith.

The substantial questions of law that arise for determination in this Second Appeal are as follows:-

1. Whether the Courts below could have validly rejected the plaint under Order 7 Rule 11(b) of the Code of Civil Procedure, without affording an opportunity to the plaintiffs to cure the defect as to valuation? and

2. Whether the decision to reject the plaint could have been taken by the Civil Judge Junior Division, or was required to be taken by the Civil Judge, Senior Division, Panaji?"

2. There are concurrent findings of both the courts below by which the appellants' plaint has been rejected under Order 7 Rule 11(b) of the Code of Civil Procedure, for being undervalued.

3. The appellant filed Regular Civil Suit No.58/03/C in the Court of Civil Judge, Senior Division, Panaji. There is no dispute about this. In the suit the appellant has challenged the validity of a sale deed purportedly executed by the respondent no.2 on behalf of the appellant in favour of respondent no.1. The sale deed is valued at Rs.50,00,000/-. However, the appellant valued the suit for Rs.12,000/-.

4. It is clear from the cause title that the suit was intended to be and was filed in the court of the Civil

Judge, Senior Division, Panaji. However, apparently, the clerk in charge of allotment of the suits, allotted it to the file of the Civil Judge, Junior Division, Panaji, on the basis of the fact that the plaintiffs had valued the subject-matter of the suit below Rs.1,00,000/- and in view of Section 20 of the Goa Civil Courts Act, 1965, Sub-section (3) which reads thus:-

> "20(3): The jurisdiction of a Junior Civil Judge extends to all original suits and proceedings of civil nature wherein the subject matter does not exceed in amount or value one lakh rupees."

5. Upon summons being served on the defendants they appeared and objected to the valuation of the suit and prayed that the appellants be directed to correct the value of the plaint to Rs.50,00,000/- and in the event no correction is made, they made an alternate prayer for rejection of the plaint under the provisions of Order 7 Rule 11(b) of the Code of Civil Procedure.

6. The Court of the Civil Judge, Junior Division, Panaji, decided this objection and rejected the plaint under Order 7 Rule 11(b) of the Code of Civil Procedure, by an Order dated 8th August, 2003. Admittedly, the plaintiffs were not required by the Court to correct the valuation within the specified time. The appellants carried the matter in appeal before the District Judge, Panaji. The Appeal was decided by the IInd Additional

District Judge, Panaji, who observed that the appellants "instead of requesting to allow them to cure the defect, chose to argue the matter (which is so endorsed by learned advocate for appellants on application dated 30.6.2003)."

This observation is made eventhough admittedly the Court did not require the appellants to correct the valuation as it is indeed required by law to do.

7. Two questions therefore arise for determination; firstly whether the decision that the suit is undervalued could have been taken by the Civil Judge, Junior Division, Panaji, or whether the decision ought to have been taken by the Civil Judge, Senior Division; and secondly, whether in the facts and circumstances the plaint could have been rejected under Order 7 Rule 11(b) of the Code of Civil Procedure without requiring the plaintiff to correct the valuation of the suit within the time to be fixed by the Court.

8. At the outset, one may observe that it is clear and there can hardly be any dispute about the fact that the appellants have indeed undervalued the suit. This has been fairly accepted by the learned counsel for the appellants. The suit seeks the relief of setting aside a sale deed of the value of rupees five lakhs, but the suit has been valued for under rupees one lakh.

9. The first question is liable to be determined in accordance with Section 12 of the Court Fees Act, 1870. Sub-section (1) of Section 12, which is relevant reads as follows:-

> **"12. Decision of questions as to valuation -** (i) Every question relating to valuation for the purpose of determining the amount of any fee chargeable under this Chapter on a plaint or memorandum of appeal, shall be decided by the Court in which such plaint or memorandum, as the case may be, is filed, and such decision shall be final as between the parties to the suit." (Emphasis supplied)

It is obvious from a plain reading of the plaint that the appellants intended to file the suit in the Court of the Civil Judge, Senior Division, Panaji. Therefore, the decision as to the correct valuation ought to have been taken by the court in which the suit was filed, i.e. the court of the Civil Judge, Senior Division, Panaji. The requirement of this provision could not have been ignored because of the ministerial decision to place the suit before the Civil Judge, Junior Division.

10. Shri Menezes, learned counsel for the respondents, submitted that the decision had to be taken by the court of the Civil Judge, Junior Division, because of the valuation of the suit by the plaintiffs, the suit having been valued at under a lakh of rupees. This argument cannot be accepted in the circumstances, because what was in issue was the very valuation itself. The

plaintiffs having filed the suit in the Court of Civil Judge, Senior Division, and an objection as to valuation having been raised, the court that was bound in law to decide the objection as to valuation was the court of the Civil Judge, Senior Division, Panaji, and not the court of the Civil Judge, Junior Division, merely because the suit was allotted to it. In fact, when a suit is instituted in a Court, it is that Court which must consider whether it is properly brought before it having regard to valuation or otherwise, vide Chapter II Rule 8(d)(vi) and then proceed. In the present case, what ought to have been done was that the suit should have been placed before the Civil Judge, Senior Division, who could then have considered the correctness of its valuation. However, the suit was allotted to the Court of the Civil Judge, Junior Division, who upon realizing that the matter was undervalued, did not take steps under Rule 233 of the Civil Manual. As observed by this Court in **M/s. D..K.M. Poperty Investments & Ors. vs. Tolentino Pereira & Ors.** reported in 1993 (2) Bom.C.R.479, Rule 233 of the Civil Manual requires that "when for any reason a suit assigned for disposal to a Juge of Junior Division and which later on is found to be beyond his pecuniary jurisdiction, he should forward his request to the District Judge to transfer the suit administratively to the Senior Civil Judge and the question of returning the plaint to the plaintiff for being judicially presented to the proper Court or return it to the Civil Judge, Senior

Division does not arise."

11. Shri Menezes, learned counsel for the respondent, relied on the decision of the Supreme Court in **Sujir Keshav Nayak vs. Sujir Ganesh Nayak**, reported in (1992)1 SCC 731 in support of the proposition that a court of limited pecuniary jurisdiction such as that of the Court of Civil Judge, Junior Division, must, on objection by the defendant try the question of court fee as a preliminary issue. I am of the view that the decision has no application to the facts of the present case where the suit was not filed in the Court of the Civil Judge, Junior Division, at all but was allotted to it, wrongly. It is also not possible to accept the contention of the respondent that the suit was rightly allotted to the court of the Civil Judge, Junior Division, though filed in the Court of the Civil Judge, Senior Division, because of Section 15 of the Code of Civil Procedure which requires a suit to be instituted in the lowest court competent to try it. This decision to send the matter to the Civil Judge, Junior Division, ought to have been taken by the Civil Judge, Senior Division, as a matter of law because the suit was filed in his court. In any case, the decision of the Supreme Court holds that in a court of limited pecuniary jurisdiction, a defendant may object to valuation, which he may not in a court of unlimited pecuniary jurisdiction. It does not apply to the present case.

12. As regards the other question, the learned counsel for the appellants contends that the rejection of the plaint is unsustainable in law, since the plaintiffs were not at any stage required to correct the valuation, accepting that the suit was undervalued. The learned counsel for the respondents have not been able to show anything to the effect that the court gave an opportunity to the appellants to correct the valuation of the suit. In fact, as observed earlier, the Appellate Court appears to have found fault with the plaintiffs for not requesting permission of the Court to cure the defect. This course is clearly not contemplated by law. The law requires the Court to require the plaintiff to correct the valuation within the time to be fixed by the court and upon failure to do so, mandates rejection of the plaint. This has admittedly not been done in the present case. In the circumstances, I am of the view that the order rejecting the plaint is bad in law because the plaintiffs were not given any opportunity to correct the valuation and further because the decision to do so was taken by the court of the Civil Judge, Junior Division, Panaji, which was not the court before which the suit was filed.

13. In the circumstances, I am of the view that the Second Appeal deserves to be allowed and is hereby allowed. The Civil Judge, Senior Division, Panaji, shall proceed with the Regular Civil Suit No.58/03/C and decide

the same in accordance with law, after deciding the question of correct valuation of the suit. The parties are directed to appear before the Civil Judge, Senior Division, Panaji, on 30th June, 2004 at 10 a.m.

S. A. BOBDE, J.

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